

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ROBERT FORTNER,

Case No. 2:23-cv-00059-CDS-VCF

Plaintiff,

ORDER

v.

JAMES SCALLY, et al.,

Defendants.

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 4). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on March 13, 2023. (ECF No. 5). The screening order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 5, 11). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 14).

Plaintiff also filed a motion for appointment of counsel (ECF No. 7), a motion for certificate of interested parties (ECF No. 8), and a motion for summons (ECF No. 9). The Court grants the motion for certificate of interested parties (ECF No. 8) and denies the motion for summons as moot (ECF No. 9) in light of this order. This order directs service in this case.

Additionally, like many prisoners who file civil-rights claims, Plaintiff asks the Court to find and appoint a free lawyer because of limited access to legal materials and lack of legal knowledge. (ECF No. 7). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil-rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The statute that governs this type of litigation, 28 U.S.C. §

1 1915(e)(1), provides that “[t]he court may request an attorney to represent any person  
2 unable to afford counsel.” However, the court will appoint counsel for indigent civil  
3 litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th  
4 Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist,  
5 a court must consider ‘the likelihood of success on the merits as well as the ability of the  
6 petitioner to articulate his claims pro se in light of the complexity of the legal issues  
7 involved.” *Id.* “Neither of these considerations is dispositive and instead must be viewed  
8 together.” *Id.*

9 The Court does not find exceptional circumstances here. See *Baker v. Macomber*,  
10 No. 2:15-CV-00248-TLN-AC, 2020 WL 1182495, at \*1 (E.D. Cal. Mar. 12, 2020) (finding  
11 that “[c]ircumstances common to most prisoners, such as lack of legal education and  
12 limited law library access, do not establish exceptional circumstances that warrant a  
13 request for voluntary assistance of counsel”). Plaintiff has demonstrated the ability to  
14 articulate his claims. The Court denies the motion to appoint counsel.

15 For the foregoing reasons, **IT IS ORDERED** that:

16 1. Plaintiff’s application to proceed *in forma pauperis* (ECF No. 4) is  
17 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In  
18 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28  
19 U.S.C. § 1915(b)(2).

20 2. The movant herein is permitted to maintain this action to conclusion without  
21 the necessity of prepayment of any additional fees or costs or the giving of security  
22 therefor.

23 3. Pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform  
24 Act, the Nevada Department of Corrections will forward payments from the account of  
25 **Robert Fortner, #1202534** to the Clerk of the United States District Court, District of  
26 Nevada, 20% of the preceding month’s deposits (in months that the account exceeds  
27 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court  
28 will send a copy of this order to the Finance Division of the Clerk’s Office. The Clerk will

1 send a copy of this order to the attention of **Chief of Inmate Services for the Nevada**  
2 **Department of Corrections** at formapauperis@doc.nv.gov.

3 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and  
4 a copy of Plaintiff's complaint (ECF No. 6) on the Office of the Attorney General of the  
5 State of Nevada by adding the Attorney General of the State of Nevada to the docket  
6 sheet. This does not indicate acceptance of service.

7 5. Service must be perfected within ninety (90) days from the date of this order  
8 pursuant to Fed. R. Civ. P. 4(m).

9 6. Subject to the findings of the screening order (ECF No. 5), within twenty-  
10 one (21) days of the date of entry of this order, the Attorney General's Office shall file a  
11 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it  
12 accepts service; (b) the names of the defendants for whom it does not accept service,  
13 and (c) the names of the defendants for whom it is filing the last-known-address  
14 information under seal. As to any of the named defendants for whom the Attorney  
15 General's Office cannot accept service, the Office shall file, under seal, but shall not serve  
16 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such  
17 information. If the last known address of the defendant(s) is a post office box, the Attorney  
18 General's Office shall attempt to obtain and provide the last known physical address(es).

19 7. If service cannot be accepted for any of the named defendant(s), Plaintiff  
20 shall file a motion identifying the unserved defendant(s), requesting issuance of a  
21 summons, and specifying a full name and address for the defendant(s). For the  
22 defendant(s) as to which the Attorney General has not provided last-known-address  
23 information, Plaintiff shall provide the full name and address for the defendant(s).

24 8. If the Attorney General accepts service of process for any named  
25 defendant(s), such defendant(s) shall file and serve an answer or other response to the  
26 complaint (ECF No. 6) within sixty (60) days from the date of this order.

27 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been  
28 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other

1 document submitted for consideration by the Court. If Plaintiff electronically files a  
2 document with the Court's electronic-filing system, no certificate of service is required.  
3 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff  
4 mails the document to the Court, Plaintiff shall include with the original document  
5 submitted for filing a certificate stating the date that a true and correct copy of the  
6 document was mailed to the defendants or counsel for the defendants. If counsel has  
7 entered a notice of appearance, Plaintiff shall direct service to the individual attorney  
8 named in the notice of appearance, at the physical or electronic address stated therein.  
9 The Court may disregard any document received by a district judge or magistrate judge  
10 which has not been filed with the Clerk, and any document received by a district judge,  
11 magistrate judge, or the Clerk which fails to include a certificate showing proper service  
12 when required.

13 10. This case is no longer stayed.

14 11. The motion for appointment of counsel (ECF No. 7) is denied without  
15 prejudice.

16 12. The motion for certificate of interested parties (ECF No. 8) is granted.

17 13. The motion for summons (ECF No. 9) is denied as moot.

18 DATED THIS 21 day of June 2023.

19  
20   
21 UNITED STATES MAGISTRATE JUDGE